

Elections Coordinator Derek Molter delivering the unanimous opinion of the Elections Commission Regarding the Complaint of the Kirkwood Ticket, Docketed 05-01.

On February 28, 2005, at approximately 3:30 p.m., the Kirkwood ticket filed a complaint with the Elections Commission. Section 801 of the IUSA Elections Code provides that the deadline to file complaints was last Thursday, February 24, 2005. The Kirkwood ticket states that their complaint stems from actions that they were aware of on February 17, 2004. While Section 803 does give the Elections Commission discretion to hear complaints that are not filed in accordance with Section 801, it is not clear that the Elections Commission can do so after the IUSA Supreme Court has already certified the election. Regardless, because the actions for which the Kirkwood ticket now complains were actions they solicited, and because the ticket had more than ample opportunity to raise its objections in a timely manner, the Elections Commission declines acceptance of the complaint as authorized by Section 803.

Because the Elections Commission declines to accept the complaint filed by Kirkwood, no decision on the merits of the complaint will be rendered. However, a brief discussion of the underlying situation is appropriate to clear up what must certainly be a confusing matter for many. A recitation of the Elections Code's recent history paints a clearer picture.

Last year, the IUSA Congress removed the provision to which the Kirkwood ticket points in their complaint that required a run-off election in the event that no ticket received forty percent of the vote. This was not controversial, as evidenced by the fact that no ticket obtained forty percent of the vote last year, and there was never any mention of a run-off (almost all of the petitioner's were involved in that election). The author of this opinion also submitted the Elections Code to last year's Congress and was present at the meeting when Congress removed

the provision. The records for that meeting are certainly inadequate, but the records that exist indicate that the provision was removed.

Prior to this year's IUSA Elections, there were multiple versions of the Elections Code floating around. Some versions included the old run-off provision and some versions did not. The current Congress voted to re-approve the previous year's Elections Code, but the resolution did not include the text of the code itself.

The Kirkwood ticket is aware of this history. When a version of the Elections Code was posted on the IUSA website that included the run-off provision, the ticket's leadership contacted the Elections Commission asserting that this was a mistake. It was unequivocally the Kirkwood ticket's position that there should be no run-off. After consulting with the Elections Commission and relevant authorities that remained from the previous year when Congress removed the provision from the Elections Code, this author contacted the tickets on February 17. The tickets were informed at that time that the version of the Elections Code posted online was mistaken. Although it is a subtle distinction, it is important to note that the Elections Coordinator did not make a "decision to omit this rule," as the Kirkwood ticket characterizes the action in their complaint. The Elections Coordinator clarified what was the accurate content of the Elections Code.

Not only did no ticket object at the time that this clarification was made, the Kirkwood ticket repeatedly expressed its enthusiasm that there was no possibility of a run-off. Only after placing second in the election did Kirkwood's position change. Undoubtedly, the Kirkwood ticket will argue that even though they previously advocated the position that there was to be no run-off, and even though they celebrated the Elections Commission's decision to adopt their understanding, their previous agreement and understanding cannot change the Elections Code.

While this is correct, the prior advocacy and understanding of the Kirkwood ticket is certainly relevant to the Elections Commission's decision whether it is just to allow them to now challenge the election after it has been certified by the IUSA Supreme Court and several days after the deadline for filing complaints.

The Kirkwood ticket's request that the Elections Commission accept their complaint is denied.